

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re REFCO CAPITAL MARKETS, LTD.
BROKERAGE CUSTOMER SECURITIES
LITIGATION

06 Civ. 643 (GEL)

VR GLOBAL PARTNERS, L.P., et al,
Plaintiffs,

07 Civ. 8686 (GEL)

- against -

PHILLIP R. BENNETT, et al,
Defendants.

07 Civ. 8688 (GEL)

CAPITAL MANAGEMENT SELECT
FUND LTD., et al,
Plaintiffs,

- against -

PHILLIP R. BENNETT, et al,
Defendants.

DECLARATION OF DAVID E. GALFUS

DAVID E. GALFUS declares, pursuant to 28 U.S.C. § 1746:

1. I am an Executive Director with Capstone Advisory Group, LLC (“Capstone”). Capstone is, among other things, the financial advisor to Marc Kirschner in his capacity as the Plan Administrator of Refco Capital Markets, Ltd. (“RCM”). As set forth below, I have reviewed certain of RCM’s records and spoken with former Refco employees to gain an understanding of those records.

2. I, or Capstone staff under my supervision, reviewed the customer statements for Capital Management Select Fund Ltd.'s ("Capital Management") account number 10014082 at RCM from the time Capital Management's account was opened in June 2004 through September 2005. Those customer statements reflect that Capital Management deposited 500,000 Lukoil ADRs in its account on June 23, 2004. The Lukoil ADRs stock-split on May 10, 2005, such that Capital Management's holding of 500,000 increased to a holding of 2,000,000 Lukoil ADRs. The customer statements that I or my staff reviewed reflect that Capital Management did not have any open financing transactions prior to June 20, 2005.

3. Thus, for the period from June 2004 through June 19, 2005, the customer statements reflect that Capital Management was holding fully paid Lukoil ADRs and also that Capital Management had no open financing positions. Specifically, Capital Management's customer statement for the period March 1, 2005 through March 31, 2005, reflects that as of March 31, 2005, Capital Management was holding 500,000 Lukoil ADRs with a market value of \$67.7 million, and that Capital Management had a cash balance of \$1,778.45 CR.

4. I also reviewed RCM's internal stock record for March 31, 2005. RCM's stock record is a lengthy report (often exceeding 700 pages) that shows for a particular date, by security, the number of securities RCM's customers have at RCM, how many of those securities are out on repo or stock loan, and how many securities are being held by RCM (typically in one of RCM's outside custodial accounts, for example, at JPMorgan Chase or Euroclear). Specifically, I looked at the Lukoil ADRs reflected on RCM's March 31, 2005 stock record.

5. The stock record shows that there were four RCM customers with Lukoil ADRs on March 31, 2005: Renaissance Securities (Cyprus), Ltd. (“Renaissance”), Capital Management, Global Management Worldwide (“Gobal”), and Reserve Invest (Cyprus), Ltd. (“Reserve Invest”). The stock record shows that the four customers had a total of 1,181,749 Lukoil ADRs between them. The stock record shows further that of those 1,181,749 ADRs, 1,052,000 were “out” on stock loan, and the remaining 129,749 ADRs were held in RCM’s custodial account at JPMorganChase.

6. The stock record also shows that two of the customers were financing their Lukoil ADR holdings, and two were holding the Lukoil ADRs with no financing, as follows:

RCM Customer	Lukoil ADRs held	Lukoil ADRs subject to financing
Renaissance	288,807	288,807
Reserve Invest	378,572	378,572
Capital Management	500,000	None
Global	14,370 ¹	None
Total	1,181,749	667,379

In addition to reviewing the stock record for Lukoil for March 31, 2005, I also reviewed the March 2005 customer statements for Renaissance, Reserve Invest, and Global. The Renaissance customer statement reflects that, as of March 31, 2005, it had 288,807 Lukoil ADRs subject to an open financing transaction. Similarly, the Reserve Invest

¹ Global’s holding of Lukoil ADRs is shown here as a net position. The RCM stock record shows that Global was long 15,000 ADRs and short 630 ADRs, i.e., a net position of 14,370.

customer statement reflects that as of March 31, 2005, it had 378,572 Lukoil ADRs subject to an open financing transaction. The Global statement reports in the section entitled “Security Positions In Your Account” that, as of March 31, 2005, Global had 14,370 Lukoil ADRs, and the statement does not show that Global had any open financing transactions at that time.

7. Because all of the Lukoil ADRs were held by RCM together, it is difficult to determine exactly which of RCM’s customers’ Lukoil ADRs were being used by RCM to make up the total of 1,052,000 Lukoil ADRs out on stock loan as of March 31, 2005. It is clear, however, that at a minimum, RCM was using at least 384,621 of Capital Management and/or Global’s ADRs in RCM’s stock loans to third parties.² Even assuming that RCM placed 667,379 of Renaissance and Reserve’s Lukoil ADRs out on stock loan, the stock record shows that RCM had an additional 384,621 of Lukoil ADRs on stock loan (1,052,000 less 667,379).

8. In addition to looking at the customer account statements for Capital Management, I also reviewed the February and March 2005 RCM account statements for the account of Investment & Development Finance (“IDF”), account number 10001626. I also reviewed excerpts of RCM’s internal stock record for February 28, 2005 and March 31, 2005.

9. The February 2005 IDF customer statement shows that, as of February 28, 2005, IDF had no open financing positions and was holding 2,691,000 units of United States Treasury Bills maturing 5/19/2005 (the “May T-bills”) with a market

² Given that Global was holding 14,370 Lukoil ADRs, even if RCM was using all of those securities in stock loan transactions, RCM must also have been using at least 370,251 of Capital Management’s Lukoil ADRs in the stock loan transactions.

value of \$2,675,284.56. The customer statement also reports that the May T-bills were acquired by IDF on February 22, 2005, without financing by RCM. A review of RCM's internal stock record for February 28, 2005 shows that, as of that date, IDF was the only RCM customer holding May T-bills and that IDF was holding 2,691,000 May T-bills. The stock record shows further that as of February 28, 2005, RCM had 2,691,000 May T-bills on repo with RSI ("Refco Securities LLC"). According to Refco's internal records, RCM entered into that repo transaction with RSI on February 22, 2005.

10. The March 2005 IDF customer statement reflects that, as of March 31, 2005, IDF had no open financing transactions, continued to hold the May T-bills, was also holding 9,786,000 units of United States Treasury Bills maturing 6/30/2005 (the "June T-bills") with a market value of \$9,720,238.08, and had a net cash balance as of March 31, 2005 of \$661.44 CR. The customer statement also reports that IDF acquired the June T-bills on March 31, 2005, without financing by RCM.

11. With respect to the June T-bills, RCM's internal stock record for March 31, 2005 shows that there were two customers holding those securities: Latina Seguros Y Reaseguros S.A. ("Seguros") holding 500,000, and IDF holding 9,786,000 June T-bills. The stock record for March 31, 2005 shows that, as of that date, RCM had 9,786,000 June T-bills out on repo, also with RSI, and that 500,000 June T-bills were being held in RCM's custodial account at JPMorganChase. According to Refco's internal records, RCM entered into the repo transaction with RSI on March 31, 2005.

12. I also checked RCM's internal stock record as of March 31, 2005 for the May T-bills. That report also shows that IDF continued to be the only RCM customer holding May T-bills and was holding 2,691,000 May T-bills. The stock record


shows further that, as of March 31, 2005, RCM continued to have 2,691,000 May T-bills subject to a repo transaction with RSI.

13. Based on the records I reviewed, it is clear that, as of March 31, 2005, a point in time when IDF had no open financing transactions, RCM was using IDF's May and June T-bills in repo transactions.

14. Based on my discussions with former Refco employees and my review of RCM's accounting records, I do not believe that RCM's use of Capital Management's non-financed Lukoil securities or IDF's non-financed May and June T-bills, were recorded on RCM's books as a "Payable to Customer."

15. To perform the above analyses for different points in time and for multiple RCM customers is time consuming and difficult due in part to RCM's methods of record-keeping. To perform such additional analyses for all of the Plaintiffs in the above-referenced actions will require significant time and cost and may require the retention of forensic accountants specializing in broker-dealers to scrutinize the records.

September 12, 2008


David E. Galfus